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**Apex Electric Services, Inc. and International Brotherhood of Electrical Workers, Local Union No. 177, AFL-CIO** Case 12-CA-24199

March 31, 2005

**DECISION AND ORDER**

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN  
AND SCHAUMBER

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge filed by the Union on December 6, 2004, the General Counsel issued the complaint<sup>1</sup> on December 20, 2004, against Apex Electric Services, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the Act. The Respondent failed to file an answer.

On January 13, 2005, the General Counsel filed a Motion for Default Judgment with the Board. On January 21, 2005, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

**Ruling on Motion for Default Judgment**

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was filed by January 3, 2005, all the allegations in the complaint would be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated January 3, 2005, notified the Respondent that

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<sup>1</sup> The complaint was served on the Respondent by certified mail on December 20, 2004. The envelope containing the complaint was returned to the Region on January 4, 2004. The envelope indicated that service had been refused. On January 5, 2005, the Region served the complaint on the Respondent by regular mail both at the Respondent's business mailing address, and at the home address of Kenneth Holmes, the Respondent's president. The copies sent by regular mail were not returned. In addition, on January 5, 2005, the Region left a copy of the complaint at Holmes' home address. It is well settled that a respondent's failure or refusal to accept certified mail or to provide for appropriate service cannot serve to defeat the purposes of the Act. See, e.g., *I.C.E. Electric, Inc.*, 339 NLRB 247 fn. 2 (2003), and cases cited there. In any event, the failure of the Postal Service to return documents sent by regular mail indicates actual receipt. *Id.*

unless an answer was received by January 10, 2005, a motion for default judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's motion for default judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, a Florida corporation with an office and place of business located in Jacksonville, Florida (the Respondent's facility), has been engaged in the nonretail business of electrical contracting.

During the 12-month period ending July 31, 2004, the Respondent, in conducting its business operations described above, purchased and received at its Jacksonville, Florida sites, goods and supplies valued in excess of \$50,000 from other enterprises, including Consolidated Electric Distributors, Inc., located inside the State of Florida, each of which other enterprises had received those goods and supplies directly from outside the State of Florida.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that International Brotherhood of Electrical Workers, Local Union No. 177, AFL-CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

At all material times, Kenneth B. Holmes, Sr. held the position of president of the Respondent and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All electricians, electricians' helpers, apprentices, laborers, truck drivers, warehousemen, delivery personnel, equipment operators, leadmen, and working foremen employed by the Employer in the greater Jacksonville, Florida area, excluding all office clerical employees, professional employees, guards, and supervisors as defined in the Act, as amended.

On September 23, 2004, the Union was certified as the exclusive collective-bargaining representative of the unit.

At all times since September 23, 2004, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since on or about September 21, 2004, on multiple occasions, the Union, by letters and otherwise, has requested that the Respondent recognize and bargain with it as the exclusive collective-bargaining representative of the unit.

Since on or about September 23, 2004, the Respondent has failed and refused to recognize and bargain collectively with the Union as the exclusive collective-bargaining representative of the unit.

#### CONCLUSION OF LAW

By the conduct described above, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of the employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) and (5) by failing and refusing since on or about September 23, 2004, to bargain with the Union, we shall order the Respondent, on request, to meet and bargain with the Union as the exclusive collective-bargaining representative of the unit and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

#### ORDER

The National Labor Relations Board orders that the Respondent, Apex Electric Services, Inc., Jacksonville, Florida, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain collectively and in good faith with the International Brotherhood of Electrical Workers, Local Union No. 177, AFL-CIO, as the exclusive collective-bargaining representative of the employees in the following unit:

All electricians, electricians' helpers, apprentices, laborers, truck drivers, warehousemen, delivery personnel, equipment operators, leadmen, and working foremen employed by the Employer in the greater Jacksonville, Florida area, excluding all office clerical employees, professional employees, guards, and supervisors as defined in the Act, as amended.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, meet and bargain with the Union as the exclusive collective-bargaining representative of the unit employees on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Within 14 days after service by the Region, post at its facility in Jacksonville, Florida, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 23, 2004.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Dated, Washington, D.C. March 31, 2005

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Robert J. Battista, Chairman

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Wilma B. Liebman, Member

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Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain collectively and in good faith with the International Brotherhood of Electrical Workers, Local Union No. 177, AFL-CIO, as the exclusive collective-bargaining representative of the employees in the following unit:

All electricians, electricians' helpers, apprentices, laborers, truck drivers, warehousemen, delivery personnel, equipment operators, leadmen, and working foremen employed by us in the greater Jacksonville, Florida area, excluding all office clerical employees, professional employees, guards, and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, meet and bargain with the Union as the exclusive collective-bargaining representative of the unit employees on terms and conditions of employment, and put in writing and sign any agreement reached.

APEX ELECTRIC SERVICES, INC.